

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GABRIEL YUPA,

Plaintiff

Case No. 14-cv-7384 (DRH)(AKT)

-against-

COUNTRY STONE & FENCE CORPORATION
and JOSE INGA,

Defendants
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LOCAL RULE 56.1 AFFIRMATION

JEFFREY HERZBERG, an attorney duly admitted to practice law in the courts of the State of New York, hereby affirm as follows:

1. I am a member of the law firm of Zinker & Herzberg, LLP, the duly retained attorneys for the Defendants Country Stone & Fence Corporation ("Country Stone") and Jose Inga ("Inga") in the defense of this action commenced by the Plaintiff Gabriel Yupa ("Yupa") seeking Federal Labor and Standards Act, 20 U.S.C. §201, *et seq.* (the "FLSA") coverage.

2. The facts set forth herein are based solely on the documentary evidence and the facts set forth in the Yupa complaint, the Defendants' answer and the Inga deposition.

3. The following are the undisputed facts pertaining to this dispute:

a. Yupa worked for Country Stone as either an employee or an independent contractor during the 2011 and/or 2012 calendar years. The complaint stated that the services were rendered during the 2012 calendar year, however, the checks in payment for those services reflected a 2011 calendar year;

b. the work rendered by Yupa, either as an independent contractor or as an employee, consisted of masonry work. Specifically, Yupa's work entailed installing fencing

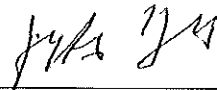
around swimming pools, for deer, and repairing the floors of the pools with brick and stone, mostly in the Hamptons area;

c. Country Stone was a seasonal business performing stone and fence work in the Hamptons area between April to September of each year, or something like April to August;

d. in the 2011 calendar year, Country Stone had Three Hundred Fifty Eight Thousand Five Hundred Thirty and xx/100 Dollars (\$358,530.00) in annual revenues; and

e. in the 2012 calendar year, Country Stone had Four Hundred Forty Thousand Eight Hundred Sixteen and xx/100 Dollars (\$440,816.00) in annual revenues.

Dated: Hauppauge, New York
March 15, 2016



Jeffrey Herzberg